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of the Board of Trustees of the Southern California United
Food & Commercial Workers Joint Pension Trust Fund

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

GARY M. ROMANCHUK,

Plaintiff,

vs.

BOARD OF TRUSTEES OF THE
SOUTHERN CALIFORNIA UNITED
FOOD & COMMERCIAL WORKERS
JOINT PENSION TRUST FUND;
SOUTHERN CALIFORNIA UNITED
FOOD & COMMERCIAL WORKERS
UNIONS AND FOOD EMPLOYERS
JOINT BENEFIT FUNDS
ADMINISTRATION, LLC; APPEALS
COMMITTEE OF THE SOUTHERN
CALIFORNIA UNITED FOOD &
COMMERCIAL WORKERS JOINT
PENSION TRUST FUND,

Defendants.

CASE NO. 2:15-cv-08180-AB-KS

**STIPULATED PROTECTIVE
ORDER COVERING
DISCLOSURES NOT
IDENTIFYING PLAN
PARTICIPANTS AND
BENEFICIARIES (L.R. 8-3)**

Complaint served: December 11, 2015

**Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and
based on the parties' Stipulated Protective Order Covering Disclosures Not
Identifying Plan Participants and Beneficiaries (L.R. 8-3) ("Stipulation") filed**

on July 28, 2016, the terms of the protective order to which the parties have agreed are adopted as a protective order of this Court (which generally shall govern the pretrial phase of this action) except to the extent, as set forth below, that those terms have been modified by the Court's amendment of paragraphs, 1, 5.1, 7.2, and 14 of the Stipulation.

**AGREED TERMS OF THE PROTECTIVE ORDER AS ADOPTED AND
MODIFIED BY THE COURT¹**

1. A. **PURPOSES AND LIMITATIONS**

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. ~~Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order.~~

~~The parties acknowledge that this~~ **This** Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items described below that are entitled to confidential treatment under applicable legal principles. ~~The parties further acknowledge, as~~ **As** set forth in Section 12.3, below, ~~that~~ this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

B. **GOOD CAUSE STATEMENT**

¹ The Court's additions to the agreed terms of the Protective Order are generally indicated in bold typeface, and the Court's deletions are indicated by lines through the text being deleted.

1 This action is likely to involve sensitive information concerning individual
2 plan participants and beneficiaries and financial information relating to the operation
3 of the Southern California United Food and Commercial Workers Unions and Food
4 Employers Joint Pension Trust Fund ("the Plan") for which special protection from
5 public disclosure and from use for any purpose other than prosecution of this action
6 is warranted. The parties will address the handling of information indentifying
7 individual Plan participants and beneficiaries, both putative class members and
8 others, in a separate proposed Protective Order; this Stipulated Protective Order
9 covers only confidential and proprietary materials and information requested in
10 discovery in this action, including matters relating to the operations and financial
11 condition of the Plan. It is not contemplated by the parties that personal identities
12 (as opposed to identifiers) or medical conditions of individual Plan participants and
13 beneficiaries will be disclosed by Defendants, or any of them, under this Stipulated
14 Protective Order.

15 Such confidential and proprietary materials and information consist of, among
16 other things, confidential business or financial information, information regarding
17 confidential business practices, or other confidential information, information
18 otherwise generally unavailable to the public, or which may be privileged or
19 otherwise protected from disclosure under state or federal statutes, court rules, case
20 decisions, or common law. Accordingly, to expedite the flow of information, to
21 facilitate the prompt resolution of disputes over confidentiality of discovery
22 materials, to adequately protect information the parties are entitled to keep
23 confidential, to ensure that the parties are permitted reasonable necessary uses of
24 such material in preparation for and in the conduct of trial, to address their handling
25 at the end of the litigation, and serve the ends of justice, a protective order for such
26 information is justified in this matter. It is the intent of the parties that information
27 will not be designated as confidential for tactical reasons and that nothing be so
28 designated without a good faith belief that it has been maintained in a confidential,

1 non-public manner, and there is good cause why it should not be part of the public
2 record of this case.

3 **2. DEFINITIONS**

4 2.1 Challenging Party: a Party or Non-Party that challenges the designation
5 of information or items under this Order.

6 2.2 "CONFIDENTIAL" Information or Items: information (regardless of
7 how it is generated, stored or maintained) or tangible things that qualify for
8 protection under Federal Rule of Civil Procedure 26(c), other than sensitive
9 information relating to individual Plan participants and beneficiaries, which is
10 addressed by a separate Protective Order.

11 2.3 Counsel: Counsel of Record, namely attorneys who have been retained
12 to represent or advise a party to this action and have appeared in this action on behalf
13 of that party or are affiliated with a law firm which has appeared on behalf of that
14 party, and their support staff.

15 2.4 Designating Party: a Party or Non-Party that designates information or
16 items that it produces in disclosures or in responses to discovery as
17 "CONFIDENTIAL."

18 2.5 Disclosure or Discovery Material: all items or information, regardless
19 of the medium or manner in which it is generated, stored, or maintained (including,
20 among other things, testimony, transcripts, and tangible things), that are produced or
21 generated in disclosures or responses to discovery in this matter.

22 2.6 Expert: a person with specialized knowledge or experience in a matter
23 pertinent to the litigation who has been retained by a Party or its counsel to serve as
24 an expert witness or as a consultant in this action.

25 2.7 Non-Party: any natural person, partnership, corporation, association, or
26 other legal entity not named as a Party to this action.

27
28

1 2.8 Party: any party to this action, including all of its officers, directors,
2 employees, consultants, retained experts, and Counsel of Record (and their support
3 staffs).

4 2.9 Producing Party: a Party or Non-Party that produces Disclosure or
5 Discovery Material in this action.

6 2.10 Professional Vendors: persons or entities that provide litigation support
7 services (e.g., photocopying, videotaping, translating, preparing exhibits or
8 demonstrations, and organizing, storing, or retrieving data in any form or medium)
9 and their employees and subcontractors.

10 2.11 Protected Material: any Disclosure or Discovery Material that is
11 designated as "CONFIDENTIAL."

12 2.12 Receiving Party: a Party that receives Disclosure or Discovery Material
13 from a Producing Party.

14 3. **SCOPE**

15 The protections conferred by this Stipulation and Order cover not only
16 Protected Material (as defined above), but also (1) any information copied or
17 extracted from Protected Material; (2) all copies, excerpts, summaries, or
18 compilations of Protected Material; and (3) any testimony, conversations, or
19 presentations by Parties or their Counsel that might reveal Protected Material.
20 However, the protections conferred by this Stipulation and Order do not cover the
21 following information: (a) any information that is in the public domain at the time of
22 disclosure to a Receiving Party or becomes part of the public domain after its
23 disclosure to a Receiving Party as a result of publication not involving a violation of
24 this Order, including becoming part of the public record through trial or otherwise;
25 and (b) any information known to the Receiving Party prior to the disclosure or
26 obtained by the Receiving Party after the disclosure from a source who obtained the
27 information lawfully and under no obligation of confidentiality to the Designating
28

1 Party. Any use of Protected Material at trial shall be governed by a separate
2 agreement or order.

3 4. **DURATION**

4 Even after final disposition of this litigation, the confidentiality obligations
5 imposed by this Order shall remain in effect until a Designating Party agrees
6 otherwise in writing or a court order otherwise directs. Final disposition shall be
7 deemed to be the later of (1) dismissal of all claims and defenses in this action, with
8 or without prejudice; and (2) final judgment herein after the completion and
9 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
10 including the time limits for filing any motions or applications for extension of time
11 pursuant to applicable law.

12 5. **DESIGNATING PROTECTED MATERIAL**

13 5.1 Exercise of Restraint and Care in Designating Material for Protection.

14 Each Party or Non-Party that designates information or items for protection under
15 this Order must take care to limit any such designation to specific material that
16 qualifies under the appropriate standards. The Designating Party must designate for
17 protection only those parts of material, documents, items, or oral or written
18 communications that qualify – so that other portions of the material, documents,
19 items, or communications for which protection is not warranted are not swept
20 unjustifiably within the ambit of this Order.

21 Mass, indiscriminate, or routinized designations are prohibited. Designations
22 that are shown to be clearly unjustified or that have been made for an improper
23 purpose (e.g., to unnecessarily encumber or retard the case development process or
24 to impose unnecessary expenses and burdens on other parties) **may** expose the
25 Designating Party to sanctions.

26 If it comes to a Designating Party's attention that information or items that it
27 designated for protection do not qualify for protection, that Designating Party must
28 promptly notify all other Parties that it is withdrawing the mistaken designation.

1 5.2 Manner and Timing of Designations. Except as otherwise provided in
2 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
3 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
4 under this Order must be clearly so designated before the material is disclosed or
5 produced.

6 Designation in conformity with this Order requires:

7 (a) for information in documentary form (e.g., paper or electronic documents,
8 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
9 Producing Party affix the legend "CONFIDENTIAL" to each page that contains
10 protected material. If only a portion or portions of the material on a page qualifies for
11 protection, the Producing Party also must clearly identify the protected portion(s)
12 (e.g., by making appropriate markings in the margins).

13 A Party or Non-Party that makes original documents or materials available for
14 inspection need not designate them for protection until after the inspecting Party has
15 indicated which material it would like copied and produced. During the inspection
16 and before the designation, all of the material made available for inspection shall be
17 deemed "CONFIDENTIAL." After the inspecting Party has identified the documents
18 it wants copied and produced, the Producing Party must determine which documents,
19 or portions thereof, qualify for protection under this Order. Then, before producing
20 the specified documents, the Producing Party must affix the "CONFIDENTIAL"
21 legend to each page that contains Protected Material. If only a portion or portions of
22 the material on a page qualifies for protection, the Producing Party also must clearly
23 identify the protected portion(s) (e.g., by making appropriate markings in the
24 margins).

25 (b) for testimony given in deposition or in other pretrial or trial proceedings,
26 that the Designating Party identify on the record, before the close of the deposition,
27 hearing, or other proceeding, all protected testimony.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party's right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time that is consistent with the Court's Scheduling Order.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process under Local Rule 37.1 et seq.

6.3 The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this

case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

(a) the Receiving Party's Counsel of Record in this action, as well as employees of said Counsel of Record to whom it is reasonably necessary to disclose the information for this action;

(b) the Receiving Party and any officers, directors, and employees of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff;;

(f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(fg) during their depositions, witnesses, and attorneys for witnesses, in the action to whom disclosure is reasonably necessary and who have signed the

"Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(gh) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as "CONFIDENTIAL," that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as "CONFIDENTIAL" before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party's permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these

provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as "CONFIDENTIAL." Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the

1 court. Absent a court order to the contrary, the Non-Party shall bear the burden and
2 expense of seeking protection in this court of its Protected Material.

3 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

4 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
5 Protected Material to any person or in any circumstance not authorized under this
6 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
7 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
8 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
9 persons to whom unauthorized disclosures were made of all the terms of this Order,
10 and (d) request such person or persons to execute the "Acknowledgment and
11 Agreement to Be Bound" that is attached hereto as Exhibit A.

12 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE** 13 **PROTECTED MATERIAL**

14 When a Producing Party gives notice to Receiving Parties that certain
15 inadvertently produced material is subject to a claim of privilege or other protection,
16 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
17 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
18 may be established in an e-discovery order that provides for production without prior
19 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
20 parties reach an agreement on the effect of disclosure of a communication or
21 information covered by the attorney-client privilege or work product protection, the
22 parties may incorporate their agreement in the stipulated protective order submitted
23 to the court.

24 **12. MISCELLANEOUS**

25 **12.1 Right to Further Relief.** Nothing in this Order abridges the right of any
26 person to seek its modification by the court in the future.

27 **12.2 Right to Assert Other Objections.** By stipulating to the entry of this
28 Protective Order no Party waives any right it otherwise would have to object to

1 disclosing or producing any information or item on any ground not addressed in this
2 Stipulated Protective Order. Similarly, no Party waives any right to object on any
3 ground to use in evidence of any of the material covered by this Protective Order

4 12.3 Filing Protected Material. A Party that seeks to file under seal any
5 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
6 only be filed under seal pursuant to a court order authorizing the sealing of the
7 specific Protected Material at issue. If a Receiving Party's request to file Protected
8 Material under seal is denied by the court, then the Receiving Party may file the
9 information in the public record unless otherwise instructed by the court.

10 **13. FINAL DISPOSITION**

11 After the final disposition of this action, as defined in paragraph 4, within 60
12 days of a written request by the Designating Party, each Receiving Party must return
13 all Protected Material to the Producing Party or destroy such material. As used in this
14 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
15 summaries, and any other format reproducing or capturing any of the Protected
16 Material. Whether the Protected Material is returned or destroyed, the Receiving
17 Party must submit a written certification to the Producing Party (and, if not the same
18 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
19 (by category, where appropriate) all the Protected Material that was returned or
20 destroyed and (2) affirms that the Receiving Party has not retained any copies,
21 abstracts, compilations, summaries or any other format reproducing or capturing any
22 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
23 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
24 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
25 reports, attorney work product, and consultant and expert work product, even if such
26 materials contain Protected Material. Any such archival copies that contain or
27 constitute Protected Material remain subject to this Protective Order as set forth in
28 Section 4 (DURATION).

1 **14. VIOLATION OF THIS ORDER.**

2 Any violation of this Order may be punished by any and all appropriate
3 measures including, without limitation, contempt proceedings and/or
4 monetary sanctions.

5 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

6 DATED: July 28, 2016

7 _____ BRUCE N. ANTICOUNI
ANTICOUNI & ASSOCIATES

8 JOSEPH A. GAROFOLO
GAROFOLO LAW GROUP, P.C.

9 BRADFORD F. GINDER
10 MARCUS S. BIRD
11 HOLLISTER & BRACE
A Professional Corporation

12 By _____ /s/
13 BRADFORD F. GINDER
14 Attorneys for Plaintiff
Gary M. Romanchuk

15 DATED: July 28, 2016

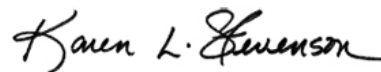
16 _____ HENRY M. WILLIS
17 DANIEL E. CURRY
18 SCHWARTZ, STEINSAPIR
DOHRMANN & SOMMERS LLP

19 By _____ /s/
20 HENRY M. WILLIS
Attorneys for Defendants

21
22 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

23 DATED: August 1, 2016

24 By:



25 Honorable Karen L. Stevenson
26 United States Magistrate Judge
27
28

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of perjury
 that I have read in its entirety and understand the Stipulated Protective Order that
 was issued by the United States District Court for the Central District of California
 on [date] in the case of *Romanchuk v. Board of Trustees of the Southern California
 United Food & Commerical Workers Joint Pension Trust Fund, et al.*, Case No.
 2:15-cv-08180-AB-KS. I agree to comply with and to be bound by all the terms of
 this Stipulated Protective Order and I understand and acknowledge that failure to so
 comply could expose me to sanctions and punishment in the nature of contempt. I
 solemnly promise that I will not disclose in any manner any information or item that
 is subject to this Stipulated Protective Order to any person or entity except in strict
 compliance with the provisions of this Order. I further agree to submit to the
 jurisdiction of the United States District Court for the Central District of California
 for the purpose of enforcing the terms of this Stipulated Protective Order, even if
 such enforcement proceedings occur after termination of this action. I hereby appoint
 _____ [print or type full name] of
 _____ [print or type full address and
 telephone number] as my California agent for service of process in connection with
 this action or any proceedings related to enforcement of this Stipulated Protective
 Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____